

USDOL/OALJ Reporter

[Davidson v. Temple University](#), 94-ERA-25 (ALJ June 6, 1996)

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UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES

DATE: June 6, 1996  
CASE NO. 94-ERA-25

*In the Matter of*

B. SCOTT DAVIDSON,  
COMPLAINANT,

v.

TEMPLE UNIVERSITY,  
RESPONDENT.

BEFORE: JOHN M. VITTON  
Chief Administrative Law Judge

**RECOMMENDED ORDER APPROVING SETTLEMENT  
AND DISMISSING COMPLAINT**

This case arises under the employee protection provision of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988 and Supp. IV 1992). On May 15, 1996, the parties submitted a Stipulation of Settlement in this matter. On May 29, 1996, the parties submitted an Addendum to the Stipulation of Settlement to clarify certain matters. Settlements of ERA whistleblower complaints must be reviewed by the Secretary of Labor to determine whether the terms are a fair, adequate and reasonable settlement of the complaint. 42 U.S.C. § 5851(b)(2)(A) (1988). *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep't of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, 89-ERA-9 and 10, slip op. at 1-2 (Sec'y Mar. 23, 1989). I have reviewed the settlement documents, and find that they constitute a fair, adequate and reasonable settlement of the complaint.

The parties included a confidentiality provision in their Stipulation of Settlement. It is noted that the Stipulation of Settlement is now part of the record of the case and is subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. FOIA

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requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act. See *Debose v. Carolina Power & Light Co.*, 92-ERA-14, slip op. at 2-3 (Sec'y Feb. 7, 1994). The parties have requested that the Stipulation of Settlement be treated as confidential commercial information pursuant to 29 C.F.R. § 70.26. Thus, the Stipulation of Settlement and the Addendum thereto have been placed in a specially marked folder directing that the provisions of 29 C.F.R. § 70.26 be followed in the event that a FOIA request is made seeking disclosure of this settlement agreement.

The confidentiality provision of the agreement enumerates certain exceptions permitting disclosure, and provides that the parties will provide notice prior to disclosure pursuant to one of the exceptions. The Administrative Review Board has taken the position that such a notification requirement does not violate public policy where it does not restrict or impinge on the Complainant or his or her counsel from disclosure after appropriate legal process. *Gillilan v. Tennessee Valley Authority*, 89-ERA-40, 91-ERA-31, 94-ERA-5, 95-ERA-9, 26 and 32 (ARB May 30, 1996). The notification requirement of this Stipulation of Settlement, as amended, does not appear to violate public policy.

Paragraph 8 of the Stipulation of Settlement provides that the agreement shall be construed under and governed by the laws of the Commonwealth of Pennsylvania. The Secretary of Labor and the Administrative Review Board have construed such provisions as excepting the authority of the Secretary of Labor and any Federal court which shall be governed in all respects by the laws and regulations of the United States. See *Carter v. Electrical Dist. No. 2 of Pinal County*, 92-TSC-11 (ARB May 30, 1996), citing *Phillips v. Citizens Assn. for Sound Energy*, 91-ERA-25 (Sec'y Nov. 4, 1991).

Accordingly, I recommend that the Administrative Review Board[1] APPROVE the agreement as construed above, and DISMISS THE COMPLAINT WITH PREJUDICE. See Sections 4, 9.

At Washington, D.C.

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JOHN M. VITTON  
Chief Administrative Law Judge

JMV/trs

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**NOTICE:** This Recommended Order Approving Settlement and Dismissing Complaint and the administrative file in this matter will be forwarded for final decision to the Administrative Review Board, United States Department of Labor, Room S-4309, Frances

Perkins Building, 200 Constitution Ave, NW, Washington, DC  
20210. See 61 Fed. Reg. 19978 and 19982 (1996).

[ENDNOTES]

[1] On April 17, 1996, the Secretary of Labor issued a Secretary's Order 2-96 delegating to the Administrative Review Board the authority to issue final agency decisions in cases such as the one *sub judice*. See Secretary's Order 2-96, 61 Fed. Reg. 19978 (May 3, 1996); Final Rule; Establishment of the Administrative Review Board, 61 Fed. Reg. 19982 (May 3, 1996).